

I would repeat once again what I said at the beginning that Mr. Nicholas should not interpret either the attitude of the Bar Committee or the State Advocate-General or my decision as being in any way a reflection upon him personally either as a man or as a member of the legal profession.

In the circumstances, I must refuse the application.

Application refused.

Solicitors: *Donaldson & Burkinshaw; Brad-dell Bros.; State Advocate-General.*

FOO YONG FONG & ANOR. v. REGINA

[A.Cr.J. (Rose C.J.) March 23, 1962]

[Singapore — Magistrate's Appeal No. 6 of 1962]

Criminal Law and Procedure — Voluntarily causing hurt — Penal Code, s.323 — Assault — Strike — Assault on non-striking employees — Assault by trade union officers — Whether offences committed in same transaction — Joint trial — Criminal Procedure Code (Cap.132), ss.161 and 169 — Whether nullity.

Trade Dispute — Trade Union officers not employees of company whose employees are on strike — Assault by them on non-striking employees — Provocation, violence and humiliation — Protection from intimidation and violence — Observations on duties of disputing parties.

Sentence — Consideration of background of episode in imposing.

Forms and procedure — Objects of.

J. and B. were employees of Guthrie & Co. Ltd. On the day in question there was a strike at the said firm. While J. and B. and other employees were leaving the premises in some form of protective formation the appellants, who were not members of the said firm assaulted them. They were then charged under section 4(a) of the Trade Disputes Ordinance (Cap.153). Subsequently, this charge was amended to that of an offence punishable under section 323 of the Penal Code. It was argued for the appellants that the trial was a nullity because the charges as constituted at the outset contained an illegality which was incurable.

Held: (1) as the two persons were charged with assaulting the same person at the same place, at the same time the offences were committed in the same transaction. Further, the two appellants were in no way prejudiced, hindered or embarrassed in their defence by reason of the form of the charges;

(2) having regard to the episode itself and to the position that the appellants occupy in Union circles three months' imprisonment in each case would not be inappropriate and the appeal should be dismissed.

Per curiam: "It is not the duty of Courts to shut their minds to topical events.....in this city in recent months there have been a number of strikes. In such a situation when incidents arising from such strikes come before them, the duty of the Courts is plain. It is to demonstrate for all to see that both strikers and non-striking are entitled to be protected from intimidation and violence.

Every worker has a right to strike; every worker also has a right to remain at work. There is a duty upon both striker and non-striker to ensure that violence and provocation to violence is avoided; otherwise a serious situation can all too easily arise.

A particular responsibility devolves upon persons holding responsible positions on either of the disputing sides. An employer himself, or his senior executive, should take care to see that the working party is in no way provocative and causes no interference to the peace-

ful and legitimate activities of pickets. Union officials, on the other hand, assuming that they find it necessary to attend the scene of the strike even though they themselves are not employees of the firm in question, must be particularly careful to avoid any provocative act."

Obiter: Forms and procedures, whether civil or criminal, are not intended or devised in order to put obstacles in the way of the plaintiff or the prosecution, as the case may be. They are designed to ensure that the issues to be determined are fairly and clearly stated, so that the defendant in a civil and the accused in a criminal case knows the case that he has to meet and is not placed in a position of embarrassment. Thus a fair trial is assured.

Case referred to:—

(1) *Babulal Chaukhani v. King-Emperor*, A.I.R. 1938 P.C. 130.

MAGISTRATE'S APPEAL.

David Marshall for the 1st appellant.

T. T. Rajah for the 2nd appellant.

Abdul Wahab Ghows (Senior Crown Counsel) (*Sachi Saurajen* with him) for the respondent.

Rose C.J.: The first appellant was charged in the following terms:—

"(1) That you, on or about the 2nd day of December, 1961 at about 12.30 p.m. on the five-footway of Chartered Bank Chambers, Battery Road, Singapore, did use violence by assaulting one Mr. R. F. Jenkins, a non-striking employee of Guthrie & Co. Ltd. with a view of intimidating the said R. F. Jenkins to abstain from reporting for work and you have thereby committed an offence under section 4(a) of Cap. 153.

(2) You are also charged that on the 2nd day of December, 1961 at about 12.30 p.m. on the five-footway of Chartered Bank Chambers, Battery Road, Singapore, did use violence by assaulting one Mr. M. J. B. Bell, a non-striking employee of Guthrie & Co. Ltd. with a view of intimidating the said Mr. M. J. B. Bell to abstain from reporting for work and you have thereby committed an offence under section 4(a) of Cap. 153."

At the same time, and in the same case, the second appellant was charged as follows:—

"That you, on or about the 2nd day of December, 1961 at 12.30 p.m. on the five-foot path of Chartered Bank Chambers, Battery Road, Singapore, did use violence by assaulting one Mr. R. F. Jenkins, a non-striking employee of Guthrie & Co. Ltd. with a view of intimidating the said Mr. R. F. Jenkins to abstain from reporting for work and you have thereby committed an offence under section 4(a) of Cap. 153."

A formal amendment was applied for and granted which involved the substitution of the word "compelling" for "intimidating" in all the charges against the two appellants.

At the close of the prosecution case the charges were further amended to read as follows:—

"You, Foo Yong Fong, are charged that you, on or about the 2nd day of December, 1961, at about 12.30 p.m. on the five-footway of Chartered Bank Chambers, Battery Road, Singapore, did voluntarily cause hurt to one R. F. Jenkins and you have thereby committed an offence punishable under section 323 of the Penal Code (Chapter 119).

2. You, Foo Yong Fong, are charged that you, on or about the 2nd day of December, 1961, at about 12.30 p.m. on the five-footway of Chartered Bank Chambers, Battery Road, Singapore, did voluntarily cause hurt to one M. J. B. Bell, and you have thereby committed an offence punishable under section 323 of the Penal Code (Chapter 119).

3. You, Govindasamy s/o Pakirisamy, are charged that you, on or about the 2nd day of December, 1961, at about 12.30 p.m. on the five-footway of Chartered Bank Chambers, Battery Road, Singapore, did voluntarily cause hurt to one R. F. Jenkins and you have thereby committed an offence punishable under section 323 of the Penal Code (Chapter 119)."

Mr. David Marshall for the first appellant — and Mr. Rajah for the second appellant associates himself with his submission — contends that the trial should be regarded as a nullity in that the nature of the charges as constituted at the outset of the trial contained an illegality which is incurable.

It is no doubt the case that two different accused may not be tried together for different offences unless the offences were committed in the same transaction. Sections 161 and 169 of the Criminal Procedure Code are relevant. It is to be noted in the present matter that the two appellants were charged (in the initial charges) with assaulting the same individual on the same day at the same place and at the identical time. There is no doubt to my mind — and indeed the contrary was not contended by learned counsel — that the matters covered by the charges formed part of the same episode and that therefore the two appellants could properly have been jointly tried. Moreover, the same counsel appeared for both appellants in the trial Court and no objection was taken to the joint trial.

I do not suggest that the absence of objection can afford jurisdiction to a Court in a matter that is outside its jurisdiction. The circumstance however of the absence of protest and the fact that the same counsel appeared for both accused has a bearing upon the question of fact as to whether the matters charged did form part of the same transaction — if indeed that question was being canvassed.

Mr. Marshall's point is not that these matters could not properly be considered to have formed part of the same transaction but that the charges themselves should have contained a specific allegation to that effect.

It may be that in certain Indian authorities (dealing with a section that is similar to section 169 of our Criminal Procedure Code) which were cited by learned counsel — in particular *Babulal Chaukhani v. King-Emperor* ⁽¹⁾, which was a Privy Council case — there are passages in the judgments which, read without regard to their context and the nature of the actual case under consideration, might lead the ingenuous reader to the conclusion that a specific allegation of the types suggested is an essential element of the charge where two or more persons are jointly tried for separate offences committed in the same transaction.

I do not however consider that their Lordships of the Privy Council could possibly have intended that this qualification — which may have been apt enough in the context of the cases that they were considering — should be regarded as of general application.

A The unreality — and indeed even absurdity — of such an application to the present case is apparent. The two appellants are charged with assaulting the same person at the same place, at the same time. They are represented by the same counsel; who most properly took no objection to the joint trial. In the light of this picture it would surely seem to be reducing the administration of the law to a farce if one were to say that the trial was a nullity on the ground of an incurable illegality in the form of the charges, in that the words "committed in the same transaction" or words to that effect were omitted. It seems to me that the fact that the offences were committed in the same transaction is implicit in the details set out in the charges; and that those details in themselves sufficiently specify — and in effect amount to — an allegation that the offences charged were committed in the same transaction.

D I may perhaps be forgiven for observing that forms and procedures, whether civil or criminal, are not intended or devised in order to put obstacles in the way of the plaintiff or the prosecution, as the case may be. They are designed to ensure that the issues to be determined are fairly and clearly stated, so that the defendant in a civil and the accused in a criminal case knows the case that he has to meet and is not placed in a position of embarrassment. Thus, a fair trial is assured. It is apparent from the matters to which I have already referred that the present appellants were in no way prejudiced, hindered or embarrassed in their defence by reason of the form of the charges.

F I am therefore of opinion that there is no substance in the submission.

G The facts of the case, to my mind, present little difficulty. It is no doubt the case, as Mr. Rajah points out, that there are many discrepancies in the evidence of the eye-witnesses and certain omissions in the original complaints. The fact remains, however, that the basic picture of the episode is clear enough.

H On the day in question, which was the opening day of a strike at the establishment of Guthrie & Co. Ltd., a group of employees were leaving the premises in some form of protective formation. The two appellants, although not employees of Messrs. Guthries, were present at the scene. The first appellant was the President of the Singapore Business Houses Employees Union and the second appellant was a member of its Central Executive Committee. According to the version which the learned District Judge accepted — and from which I see no reason to dissent — a Mr. Jenkins was struck or pushed violently in the back by the first appellant and propelled down the stairs. Another prosecution witness, a Mr. Bell, went to the assistance of Mr. Jenkins and was also assaulted.

I No question of mistaken identity arises in the matter as both appellants concede that they

were present, although their version of the episode differs from that of the prosecution.

The first appellant states that he was following a pace or two behind Mr. Jenkins when he tripped upon his shoe lace and accidentally fell against him. He was, he says, about to apologise when Mr. Jenkins swung a blow at him.

The second appellant's position was that he saw the first appellant being assaulted and loyalty came to his assistance.

The learned District Judge disbelieved the appellants and rejected their stories. Having regard to the evidence on the record and the reasonable inferences to be drawn from it in the light of the overall picture, he could hardly, in my view, have come to any other conclusion. I have no doubt that Mr. Jenkins was the victim of a deliberate assault committed by a responsible official of the Union concerned; and that the second appellant was available in support of the first appellant, and vigorously assisted him.

The convictions, in my opinion, were undoubtedly right and must be affirmed.

The question now arises as to sentence.

It is not, I would suggest, the duty of Courts to shut their minds to topical events. It is unfortunately the case that in this city in recent months there have been a number of strikes. In such a situation when incidents arising from such strikes come before them, the duty of the Courts is plain. It is to demonstrate for all to see that both strikers and non-strikers are entitled to be protected from intimidation and violence.

Every worker has a right to strike; every worker also has a right to remain at work. There is a duty upon both striker and non-striker to ensure that violence and provocation to violence is avoided; otherwise a serious situation can all too easily arise.

A particular responsibility, in my view, devolves upon persons holding responsible positions on either of the disputing sides. An employer himself, or his senior executive, should take care to see that the working party is in no way provocative and causes no interference to the peaceful and legitimate activities of pickets. Union officials, on the other hand, assuming that they find it necessary to attend the scene of the strike even though they themselves are not employees of the firm in question, must be particularly careful to avoid any provocative act.

In the present matter Mr. Marshall suggested that the two appellants were permissibly present at the scene as they may have wished to see that their pickets were not provoked. If that, indeed, was their motive in attending the scene, then their performance was singularly ill-adapted to that end. Why, for example, did the first appellant — and this is part of his own story — consider it necessary to follow a pace or two behind Mr. Jenkins? It cannot seriously be suggested that Mr. Jenkins and his party of workers whom he was helping to escort were at any stage guilty of — or even contemplating

— any form of provocative action against the strikers or any of them. The only provocation, in the most popular sense of the term, that they afforded was the fact that they remained at work. And that, abundantly, is no provocation at all in the sense which learned counsel and I attribute to the term.

I therefore fully share the view of the learned District Judge that the action of the two appellants was disgraceful and irresponsible and might well have led to a serious situation. Having regard to the episode itself and to the position that the appellants occupy in Union circles a severe penalty would seem to be not only appropriate but necessary.

It is important to bear in mind that this was not a case of a junior employee of the firm losing his head and becoming foolishly and unpremeditatedly involved in violence. I am not suggesting and do not wish to be thought to suggest that the Courts can in any sense condone acts of violence, however insignificant the employee concerned. But the matter is one which could properly be taken into consideration in assessing sentence.

In the present case, as I have already stated, the two appellants are responsible officials in an important trade union. So far from setting an example to the employees of the firm of which they themselves are not members, they initiated a cowardly assault on employees who were only doing what they were fully entitled to do.

Mr. Marshall, who argued the appeal for the first appellant with the dignity and fairness which I have become accustomed to expect, suggested, in mitigation, that Mr. Jenkins received "just a punch in the back." I would say, in passing, that I do not accept Mr. Marshall's phrase as correctly describing the episode. The position as accepted by the learned District Judge and as deposed to by the prosecution witnesses was that Mr. Jenkins as a result of the blow was propelled down the stairs. It is, no doubt, true that the actual injuries upon Mr. Jenkins and Mr. Bell were fortunately superficial. That, however, is not the real point. The matter to be considered is not the nature of the injury so much as the element of provocation and humiliation involved in its infliction. Here we have a senior executive of a firm being publicly assaulted by the President of the Union. It seems to me that one must reasonably infer that the object of the assault was to humiliate; in any event, that inevitably must have been the effect in the eyes of the employees who witnessed it, whether or not they were strikers. The actual injury inflicted is, in this context, less important than the provocative nature of the assault; although it goes without saying that had serious injury been inflicted the case would assume a far graver aspect. I find it impossible to regard the conduct of the appellants in any other light but that it was mischievous and irresponsible and calculated to lead to what might well have been a serious breach of the peace.

Finally, Mr. Marshall put forward the subtle argument that to send these two appellants to prison would make martyrs of them, and that from the public interest this would be unwise.

I am unable to accede to such a proposition. In the first place I should be sorry to believe that responsible public opinion would support the highly provocative action of the appellants in the present case. I should also be reluctant to accept that any considerable section of the public opinion of this State is so un-informed as to approve such conduct and waste sympathy on its perpetrators. But if, contrary to my belief, there is such a section of opinion, then I consider it my duty to disregard it.

Having regard to the facts and the background of this episode and the positions occupied by both appellants I have come to the conclusion that the learned District Judge was right in imposing prison sentences; and the terms themselves — three months' imprisonment in each case — cannot, in my view, be said to be inappropriate.

For the reasons that I have given both appeals are dismissed and the convictions and sentences affirmed.

Appeals dismissed.

Solicitors: *David Marshall; T. T. Rajah.*

LIM LIAN GEOK v. THE MINISTER OF INTERIOR, FEDERATION OF MALAYA

[O.C.J. (Thomson C.J.) October 13, 1961]

[K.L. — Originating Motion No. 24 of 1961]

[C.A. (Hill and Good JJ.A., and Hepworth J.)
January 4, 1962]

[K.L. — F.M. Civil Appeal No. 35 of 1961]

Constitutional Law — Citizenship — Deprivation of — Constitution of Federation of Malaya, Article 25 — Notice of intention to make order — Validity of Notice sent by Registrar-General of Citizens — Form of Notice — Content of Notice — Extent of power of Minister to order Inquiry — Conditions precedent necessary — Meanings of "disloyalty" and "disaffection" — Freedom of speech.

On August 13, 1961, the Registrar-General of Citizens issued a Notice to the applicant (appellant) in the form provided under Rule 22 of the Citizenship Rules, 1960, notifying him of a proposal to make an order under Article 25 of the Constitution of the Federation depriving him of his citizenship and drawing his attention to Article 27(2) under which the applicant was entitled to have his case referred to a Committee of Inquiry. The grounds on which the order under Article 25 was proposed to be made were notified to the applicant, being that he did make:

- (a) deliberate misrepresentation and inversion of Government Education Policy in a manner calculated to excite disaffection against the Yang di-Pertuan Agong and the Government of the Federation; and
- (b) emotional appeals of an extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence.

On September 12, 1961 an order of prohibition *nisi* was granted to the applicant by Ong J. prohibiting the

A Minister of the Interior (respondent) from referring the applicant's case to a Committee of Inquiry. The grounds on which applicant obtained this order of prohibition *nisi* were, *inter alia*:

- (i) that it was not competent for the Registrar-General to issue the notice that he purported to have issued under Rule 22 of the Citizenship Rules, 1960;
- (ii) that the allegations made as to the basis for the Notice, assuming them to be true, were not a sufficient compliance with the requirements of paragraph (a) of Article 25(1).

B Held: (1) under section 6 of the Second Schedule of the Constitution the Minister of Interior and Justice is authorised to make rules and prescribe forms for the exercise of his functions under Part III of the Constitution and under the Second Schedule. Rule 3 of the Citizenship Rules, 1960, provides that the Minister may appoint a Registrar-General of Citizens in order to give effect to the objects of Part III of the Constitution and the Second Schedule. It follows that when the Registrar-General acts under Rule 22 of the Citizenship Rules, and signs the Notice, he is acting not in the purported exercise of any powers delegated to him, for there is no delegation, but simply as the clerk or amanuensis of the Minister. The Notice issued to the applicant was therefore valid in form;

D (2) though it is necessary for the Minister when making an order under Article 25 to have attained satisfaction on the matters laid down in Article 25(1)(a) and Article 25(3), it is not necessary that the Minister should have actually attained satisfaction before he takes steps to cause an inquiry to be held. However, before he takes such steps, the Constitution requires the fulfilment of four conditions which are (i) the Minister must have certain grounds of fact in mind; (ii) these grounds must consist of acts or speech; (iii) the person against whom the Order is proposed to be made is informed of the grounds; (iv) these grounds of fact should be capable, if made out, of showing as a matter of law disloyalty and disaffection towards the Federation. The four conditions were here satisfied and the order *nisi* would therefore be discharged.

F Disloyalty and disaffection which would justify depriving a citizen of his citizenship discussed.

It was argued on the motion for discharge that the grounds of the order deprived appellant of his right of free speech.

Held: Article 10(1)(a) is not a bar to an allegation based on speech under Article 25(1)(a).

On appeal it was argued by the applicant before the Court of Appeal that —

- G (a) even assuming that the matters of complaint stated in the Notice to be true, they were not such as to be capable of attracting the altogether excessive penalty of deprivation of citizenship, having regard to the provisions of Article 25 of the Constitution;
- (b) that the language of the Form made it clear that the Registrar-General purported to act and in fact acted as the delegate of the Federal Government and not as a mere amanuensis of the Minister;
- (c) that the Minister's affidavit not having condescended to any particulars setting out the facts and circumstances on the faith of which he attained the requisite satisfaction, it was not possible to say whether there were good grounds or any grounds for such satisfaction; and
- (d) that in any event the second ground stated in the Notice was by itself incapable under that Article of providing the required satisfaction to the Minister, because it merely alleged criminal offences against him which if proved would render him liable to punishment, in accordance with the law of the land and no more.

Held: (1) the Court of Appeal at this stage was concerned only with the question whether the Notice issued to the appellant was good in form and in content;